

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

E070409

(Super.Ct.No. RIJ1600727)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,
Judge. Affirmed.

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General,
Michael Pulos, Seth Friedman and Kathryn Kirschbaum, Deputy Attorneys General, for
Plaintiff and Respondent.

A Welfare and Institutions Code¹ section 602 petition filed against defendant and appellant C.T. (minor)² alleged that he was in possession of a weapon on school grounds (Pen. Code, § 626.10, subd. (a)(1), count 1) and that he was carrying a concealed dirk or dagger (Pen. Code, § 21310, count 2). Minor admitted the allegation in count 1, and a juvenile court dismissed count 2. The court granted him deferred entry of judgment (DEJ). The court subsequently found minor in violation of his DEJ terms and ordered the DEJ lifted. It then declared him a ward of the court and placed him on probation, on specified terms. The court later held a review hearing, at which defense counsel requested minor's case be dismissed and his records sealed. However, the court ordered minor's wardship terminated as unsuccessful.

On appeal, minor contends that the court abused its discretion in declining his request to dismiss his case and seal his juvenile court records under section 786. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2015, a police officer responded to a report that a student brought a knife to school. The officer arrived on campus and contacted minor. Minor was carrying a large knife in the front of his shorts. Minor admitted he got into a confrontation with another student that morning and drew the knife.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Minor turned 18 in March 2017. However, for the sake of consistency, we will still refer to him as "minor" throughout this opinion.

On July 6, 2015, the People filed a section 602 petition alleging minor, who was 16 years old, possessed a weapon on school grounds (Pen. Code, § 626.10, subd. (a)(1), count 1), and was carrying a concealed dirk or dagger (Pen. Code, § 21310, count 2). Minor admitted the allegation of count 1, and the court dismissed count 2. The juvenile court placed minor on DEJ, under specified terms. (§ 790.)

On December 12, 2016, the probation department filed a review memorandum and reported that minor was an 11th grade student. His most recent progress report stated that he had C's in math and English, a D in history, an A in wrestling, and a "pass" in study skills. He had attended 70 out of 76 days enrolled; he had four excused absences and two unexcused absences. He missed his first period class 32 times. His mother reported that his behavior at home had improved, but he had trouble waking up on time to go to school. Minor had yet to complete his court ordered assignments, including 100 hours of community service. He had completed 32 out of the 100 required hours.

Minor failed to appear at the review hearing scheduled for December 15, 2016. The court set the next hearing for February 15, 2017, and issued a bench warrant.

On February 8, 2017, the probation department filed another review memorandum and reported that minor raised his math grade to a B, but his other grades remained the same. He sustained 12 excused absences and four unexcused absences. Moreover, he was enrolled in a victim awareness class in January 2017, but failed to appear for the scheduled classes. The probation officer enrolled him in another class that was to begin on March 22, 2017. On February 6, 2017, minor enrolled in an anger management class through Olive Branch Counseling Center (Olive Branch) and was scheduled to begin on

February 11, 2017. The probation officer opined that minor's compliance with his conditions had been fair.

The court held a review hearing on February 15, 2017, and minor appeared. The court quashed the bench warrant and extended his DEJ to March 30, 2017.

The next review memorandum was filed on March 15, 2017. The probation officer reported that minor's grades were declining. He had a D in English, and F's in history, math, and study skills. However, the officer noted that minor had reached the age of majority and continued to attend school, to his credit. Minor's mother stated that his behavior at home needed improvement; he would leave without permission and return home past his curfew, and he was frequently tardy to school. He was referred to victim awareness and anger management counseling, but failed to enroll. The probation officer instructed minor to enroll at Olive Branch for anger management by March 17, 2017.

The officer further reported that minor completed his community service hours.

However, he failed to appear for drug testing on March 13, 2017, as directed.

The court held a review hearing on March 30, 2017, and minor failed to appear. The court issued a bench warrant and ordered the probation department to file a request to lift the DEJ.

The probation department filed the request to lift DEJ on April 24, 2017. The officer stated that minor was in violation of his DEJ, in that he failed to complete anger management counseling and a victim awareness program. He provided proof of enrollment for anger management at Olive Branch on March 31, 2017; however, he apparently did not attend. He was scheduled to begin a victim awareness class on March

22, 2017, but failed to attend for two consecutive weeks; thus, he was dropped from the class. The probation officer opined that minor was not taking his probation conditions seriously, since he had over one year to complete anger management and victim awareness, but had not done so. Minor also continuously failed to abide by his curfew and parent directives. As such, the probation officer recommended that the court revoke his DEJ and declare him a ward.

The court held a hearing on May 1, 2017. Minor appeared, and the court quashed the warrant. The court found that minor had not complied with or completed his DEJ; thus, it lifted the DEJ and declared him a ward of the court. The parties submitted. The court continued minor in his own custody, since he was 18 years old, on the same probation conditions.

The probation department filed a review memorandum on June 14, 2017. Minor provided proof of enrollment in anger management classes at Olive Branch on March 31, 2017. He attended four classes. However, each session was \$40 and his mother was on a limited income. The probation officer advised his mother to see if Olive Branch accepted minor's health insurance or could place him on a payment plan. Minor's current grades were not available for review. His mother reported no issues in the home and was pleased he was still attending school, even after turning 18. The probation officer stated that minor had nearly completed all of his requirements ordered by the court. He had completed 106 hours of community service and attended four anger management sessions. Thus, he recommended that minor's wardship be terminated successfully.

The court held a hearing on June 20, 2017, and stated that it had reviewed the probation officer's report. The court noted the officer's recommendation to terminate wardship, but said it was not necessarily in agreement. The court commended minor's improvement since the last hearing, but did not believe it warranted the termination of the wardship yet. The prosecutor's concern was the anger management requirement, which had not been completed. Minor's counsel stated that minor had completed four anger management sessions, and but for the fact that the cost of \$40 a session was prohibitive, he would have completed his requirement. The court said it would order him to go to the probation department, and they would help him find anger management classes that did not cost \$40. It added that, if he completed more anger management and kept up a good report, it would seriously consider terminating his wardship.

The probation officer filed a review memorandum on August 7, 2017. He reported that, on July 26, 2017, he provided minor with contact information to Path of Life for anger management classes.

The court held a hearing on August 11, 2017, and minor failed to appear. The court issued a bench warrant. Minor's counsel requested a continuance, which the court granted. The court quashed the warrant on September 19, 2017, when minor appeared in court. At that time, the court ordered the probation department or provide an updated review of minor's progress.

On November 13, 2017, the probation officer filed a report and stated that minor was still struggling in school. He had completed 163.5 out of 190.5 attempted credits in school, but had a 1.69 grade point average (GPA). From August 10, 2017 through

November 9, 2017, he had 59 period absences and 16 tardy periods, and he received numerous referrals for truancy. The probation officer further reported that, although he gave minor a referral to the Path of Life anger management program, minor failed to provide proof of enrollment or attendance. The probation officer recommended that minor be continued a ward to give him more time to successfully rehabilitate. On November 17, 2017, the court set another hearing for January 24, 2018.

The probation officer filed a review memorandum on January 19, 2018, and reported that minor's latest grade report reflected poor academic performance. He had completed five of the 20 attempted credits for the current semester. From November 13, 2017 through January 16, 2018, he had 12 period absences and 11 tardy periods, and he received numerous referrals for truancy. The probation officer also reported that minor submitted to a drug test on January 16, 2018, and the results were pending; however, he admitted to using marijuana on January 2, 2018. Furthermore, on January 16, 2018, minor reported that he completed his anger management and victim awareness classes; however, he did not provide proof of completion for the anger management program. The probation officer called Path of Life to verify, but the call was not answered. Minor's mother stated that her son was doing well at home and was following house rules and abiding by his curfew.

The court held a hearing on January 24, 2018, and the court asked minor what his problem with school was. Minor said he was waking up late. The court said it was very close to dismissing his case, but it wanted minor to have an education. The court told him he needed to go to school on time, and it set the hearing out for another 90 days.

The probation officer filed another review memorandum on April 18, 2018. Since the last review in January, minor's grades got worse. He currently had 10 of the 20 attempted credits, and he had three F's, one D, one C-, and one "Pass." He also had 14 tardy periods and a behavioral referral on March 6, 2018. Furthermore, minor tested positive for marijuana on February 22, 2018 and April 5, 2018. Additionally, on February 22, 2018, the probation officer questioned minor about his anger management completion, and minor said he did not know where he completed the class, since he lost his certificate and contact information. He assured the officer that it was not Path of Life. The officer directed him to locate his certificate, but minor still did not provide proof. The probation officer opined that minor continued to not take his grant of wardship seriously and was not responsible in addressing court matters. The officer recommended that the wardship be terminated as unsuccessful.

The court held a hearing on April 24, 2018. The public defender did not agree with the probation officer's recommendation and pointed out that minor had completed community service and victim awareness, and was attending anger management, but could not afford to continue. She pointed out that minor had not had any other anger-related incidents since 2015, so perhaps the four anger management classes were enough. Moreover, minor was respectful at home, minded his curfew, and was showing up every day to school, albeit late. The public defender thus argued that the court should seal minor's records. The prosecutor pointed out that, on January 24, 2018, the court wanted to terminate minor's wardship as unsuccessful; however, it decided to give him 90 more days to get sober, improve in school, and complete his anger management. In light of his

failure to do so, the prosecutor agreed with the probation department that he should be terminated as unsuccessful. The court pointed out that what the public defender stated on the record regarding anger management was completely contrary to what minor had previously told probation. The public defender said the reason minor had not continued the anger management classes was that he could not afford them. However, minor reported that he had completed his classes, but could not find the paperwork. He claimed he had proof, yet never provided it. The court further pointed out that minor had three failures to appear in court, tested positive for marijuana twice, his grades were horrible, and he was tardy for school. The probation officer then verified that the positive drug test on February 22, 2018, was at level 52, and on April 5, 2018, it went up to 117. The court terminated minor's wardship as unsuccessful.

ANALYSIS

The Court Properly Exercised its Discretion in Denying Minor's Motion

Minor contends the juvenile court abused its discretion in denying his motion to dismiss his wardship and seal his juvenile records pursuant to section 786. We disagree.

A. Relevant Law

Section 786, subdivision (a), provides: "If a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes . . . a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice." "[S]atisfactory completion of an informal program of supervision or another

term of probation described in subdivision (a) shall be deemed to have occurred if the person . . . has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.” (§ 786, subd. (c)(1).)

A decision to grant or deny a section 786 motion is reviewed for abuse of discretion. (*In re A.V.* (2017) 11 Cal.App.5th 697, 701.) “Under the abuse of discretion standard, ‘a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’ ” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004 (*Hovarter*); see *People v. Kipp* (1998) 18 Cal.4th 349, 371 (*Kipp*) [“A court abuses its discretion when its ruling ‘falls outside the bounds of reason.’ ”].)

B. There Was No Abuse of Discretion

The record supports the court’s decision to terminate minor’s wardship as unsuccessful and thereby deny his motion to dismiss the petition and seal his records. The court found there was no satisfactory completion of minor’s probation because of his failures to appear in court, his positive drug tests, his grades and tardiness in school, and his failure to complete anger management. The court gave minor many chances to rehabilitate, beginning by placing him on DEJ in February 2016. From the start, minor had poor grades and was tardy to school. Instead of improving, his grades started to decline. He continued to be late for class and/or miss them, and he received numerous referrals for truancy. Throughout his time on DEJ and after he became a ward, minor

was late for class and truant. Moreover, his grades got even worse. The latest report filed on April 18, 2018, showed that his GPA was 1.00.

Furthermore, as the probation officer opined, minor was not taking his grant of wardship seriously. The court pointed out that minor failed to appear in court as ordered on December 15, 2016, March 30, 2017, and August 11, 2017.

In addition, minor apparently did not complete an anger management program as ordered. There was some confusion over this matter, since the probation officer previously reported that minor only completed four classes and could not afford to continue. He was referred to a program at Path of Life, which apparently was low cost. Minor subsequently reported that he completed his anger management requirement, but said it was not with Path of Life. Minor could not provide a certificate of completion and could not even remember where he completed the class. At the last hearing, the public defender conceded there was no proof of completion, but asserted that minor could not afford anger management and the four classes he completed were adequate. Thus, it is unclear if minor attended only four classes or completed a program. In any event, he never provided proof of completion of anger management, as required.

Finally, it is undisputed that minor tested positive for marijuana twice. His drug test on February 22, 2018, was at level 52, and on April 5, 2018, it went up to 117.

Minor contends that he substantially complied with his probation terms, and he focuses on the court's comments that he "made no positive changes" and he "achieved [nothing] other than his parents saying that he's okay at home." He argues that the court either did not understand its discretion, or was "simply mistaken" about his record, when

it concluded he had accomplished nothing. He points out that he completed victim awareness and anger management classes, performed over 100 hours of community service, maintained good attendance at school, and remained enrolled in school even after the age of majority. Although we agree the court’s comments that minor had made no positive changes may not have been warranted, we cannot say that its decision to terminate his wardship as unsuccessful was arbitrary or capricious. (*Hovarter, supra*, 44 Cal.4th at p. 1004.) The court pointed to specific factors to support its decision, including minor’s poor attendance and performance in school, his failures to appear in court as ordered, his failure to complete an anger management program, and his marijuana use. (See *ante*.)

Ultimately, minor has not demonstrated that the court’s decision “ ‘falls outside the bounds of reason.’ ” (*Kipp, supra*, 18 Cal.4th at p. 371.) We conclude that the court did not abuse its discretion in declining to dismiss minor’s petition and seal his records under section 786.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

RAPHAEL
J.